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US, Soviets share evidence on former Nazis; émigrés protest

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Washington

Almost lost amid superpower posturing over arms control and the Reagan-Gorbachev summit is the extensive behind-the-scenes cooperation between the United States and the Soviet Union on a different issue — tracking down former Nazi war criminals and collaborators living quietly in the US.

American Lithuanians, Latvians, Estonians, Ukrainians, and other immigrants from Eastern Europe claim the Soviets are using their participation in the

Nazi-hunting effort to harass and discredit anti-Soviet émigrés in the US.

These émigrés, many of whom fled eastern and northern Europe to escape the approaching Red Army in the mid-1940s, say they are facing a new Russian invasion — an invasion of their rights as naturalized US citizens. They add that this new invasion is being carried out with the full cooperation of the Reagan administration's Justice Department.

"The Justice Department is serving the interests of the Soviets by pointing a finger at collaborators and meting out specific revenge against various ethnic groups in the US," says Tony Mazeika, president of the Coalition for Constitutional Justice and Security, an umbrella organization of some 40 émigré and other groups nationwide.

"We feel it is just too serious a matter to take away one's citizenship and deport an individual on evidence that is not corroborated by other sources that are not from the Soviet Union," says Austris Zerr of the Lithuanian American Community of the USA.

Justice Department officials counter that the Soviets have a genuine interest in prosecuting war criminals — noting that the Russians suffered greatly at the hands of the Nazis — and that Soviet animosity toward the émigrés does not necessarily taint the captured German documents in Soviet archives, nor does it automatically undermine the veracity of personal accounts of those who survived or participated in Nazi atrocities.

The Anti-Defamation League of B'nai B'rith believes the true aim of the émigrés is to halt US efforts to track down Nazi war criminals. A B'nai B'rith report calls the émigrés' concerns "a propaganda smoke screen that seeks to exploit anticommunism and US-Soviet tensions."

The central issue in this debate is the extent to which the US Justice Department's Office of Special Investigations (OSI) should rely on evidence from the Soviet Union in cases against persons accused of collaborating in Nazi war crimes.

OSI officials assert that there is no evidence the Soviets have falsified docu-

ments or influenced Soviet citizens to give untruthful testimony. They also note that West German courts have accepted Soviet evidence for 20 years.

"There isn't a single document that we have received, at least as of today, that has not been authentic," says Michael Wolf, deputy director of OSI. "We analyze absolutely everything they give us."

The Soviets, as part of an informal 1980 agreement, are supplying US prosecutors with evidence to help the Justice Department strip accused Nazi collaborators of their US citizenship and, in some cases, deport them to the Soviet Union.

Under US laws, the defendants are not tried for their alleged participation in Nazi war crimes. Rather, the cases hinge on whether the defendants lied to US officials about their activities during the war in order to gain visas to enter the country.

Since 1979 the OSI has opened some 900 case files of suspected Nazi collaborators. These efforts have resulted in 18 denaturalization orders and 15 deportation orders (or agreements that the defendant will leave the country voluntarily). Eight defendants have actually left the US. At present, 28 cases are pending in US courts. Most of them involve émigrés from Soviet-occupied territories.

"We shouldn't be surprised if we find that the Soviets are using this as an avenue for other political objectives," says Richard H. Shultz, an expert in Soviet disinformation efforts and an associate professor at the Fletcher School of Law and Diplomacy. He adds, "I really have great suspicions when it comes to this kind of evidence. I think that any material that we take from the Soviet Union needs to be looked at in a very careful way. I wouldn't take it at face value."

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Ladislav Bittman, a former Czechoslovakian intelligence officer and disinformation specialist who defected in 1968, says the Soviets could fabricate evidence if they wanted to discredit individuals in the US. "But that would happen only in cases where the individual was highly visible and a politically active opponent of the Soviet Union." He stresses that most targets of OSI probes live quiet, nonpolitical lives.

Nonetheless, the émigré community has developed into one of the strongest anti-Soviet lobbies in the US, and its unceasing criticism has become an irritant to the Soviets. Mr. Bittman and Mr. Shultz note that Soviet propaganda consistently portrays the US as a sanctuary for Nazi war criminals, an effort in part to discredit émigrés.

At the heart of the émigrés' concerns is what they consider an undermining of the US legal system through its partnership with the Soviet Union.

American defense attorneys David Springer and Paul Zumbakis say that it is extremely difficult, under the conditions of the Soviet-OSI agreement, for Americans to verify the accuracy of Soviet-supplied evidence. In effect, they say, US defendants accused of Nazi war crimes are asked to trust the Soviets.

The attorneys note that conditions of the US-Soviet agreement grant US prosecutors a significant advantage over the defense in war crimes cases:

- The Soviets forbid US officials, prosecutors, and defense attorneys from personally examining and searching Soviet archives to verify that no exculpatory documents exist. Under current procedures the Americans must assume the Soviets are releasing all relevant materials.

There is no way to verify this.

- Soviet witnesses may be questioned only while Soviet government officials are present. Questioning must take place with a Soviet government translator. Soviet officials have in some cases forbidden all questioning about prior contacts and conversations between witnesses and Soviet authorities. (Some defense attorneys contend the KGB coaches witnesses to ensure that their testimony is in the best interests of the Soviet state.)

- Defense attorneys are not permitted to freely seek out potential witnesses for the defense, nor are they permitted to travel freely to the scene of the alleged war crimes. Specific requests for defense witnesses or travel must be transmitted through US government prosecutors via diplomatic channels to the Soviet government.

"It is a sham, our rules are violated and we dignify the Soviet system," Mr. Zumbakis says. "We can't even see the scene of the killing."

He adds, "When you have a procedure where only the prosecutor gets evidence, you have a fundamental problem in the process."

OSI officials counter that the entire process is under the ultimate review of the US judge who hears the case. Government prosecutors argue that US judges are capable of determining for themselves when undue pressures have been applied to witnesses and when Soviet procedures violate the rights of US defendants.

To date, judges in three cases have taken exception to Soviet interference in the judicial process.

First of two articles. Tomorrow: A case that raises questions about the use of Soviet evidence in US courts.

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Soviet evidence violates US rules in Nazi case

Judge and defense attorneys cite constitutional protections

Second of two articles

By Warren Richey

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The Smilga massacre took place 44 years ago and half a world away in an area that is now part of the Soviet Union.

For accused Nazi collaborator Juozas Kungys — a 70-year-old retired dental technician in New Jersey — the future hangs on each tiny detail stored in the fading memories of associates he has not seen for decades and some he perhaps never knew by name.

Even worse, from his point of view: The only associates to testify in his United States trial live on the wrong side of the iron curtain.

Mr. Kungys's case, currently pending in a federal appeals court in New Jersey, has become a rallying point for anti-Soviet émigrés in America. The Soviet Union is providing key evidence to the US Justice Department's Office of Special Investigations (OSI) in helping track down alleged Nazi collaborators living in the US. Critics of this cooperation claim the Soviets influence or falsify testimony against émigrés, such as Mr. Kungys.

US officials counter that the Soviets have no reason to single out individuals for elaborate disinformation schemes. They maintain that to date there has been no indication that evidence submitted by the Soviets in Nazi collaborator cases has been falsified.

According to the trial record, it happened in August 1941, in a wooded area near the Smilga River outside Kedainiai in Nazi-occupied Lithuania. The Germans gave the orders.

"We were told to surround the place there where the shooting was to take place and not to let strangers go near it," recalled Jonas Dailide who, with Kungys, was a member of a Lithuanian reserve unit pressed into service when the Nazis invaded Lithuania.

The Soviet judicial system is structured to tailor evidence and produce results which further the political ends of the state at the expense of justice.

The Jewish residents from Kedainiai and the surrounding region had already been moved by German soldiers into large barns at a horse farm several kilometers from town. Starting at about 10 a.m. they were taken — men, women, and children — to a long, narrow pit near the Smilga. There were 2,000 of them.

"I could see it, not very clearly but I could see it," recounted Mr. Dailide. He was carrying a rifle and was positioned some 70 meters from the pit. Dailide was 34 years old at the time. Kungys, armed with a pistol from the state bank where he worked, was 26.

"Near the pit the people were ordered to undress. Then they were ordered to move to the edge of the pit and the shooting started," said Juozas Kriunas, 24 at the time, and also a member of the Lithuanian reserves.

Mr. Kriunas, who spent 10 years in a Soviet work camp for his part in the massacre, added: "Everybody was shooting. The people I have mentioned, and the German soldiers."

He was asked: Did you shoot? "Yes," he answered.

Did Mr. Kungys shoot? "Yes."

The Kungys case hinges on the need to establish that he participated willingly in the massacre. It has already been established that he was present at the massacre and was armed with a pistol. But was he a Nazi collaborator? This case illustrates the complexity of the job facing OSI prosecutors.

In the early 1940s, the small nation-states of northern

and eastern Europe were caught in the deadly cross tides of Stalin's purges and Hitler's genocide. Positioning for power and struggling to survive in these states were an array of pro-Russians, pro-Germans, nationalists, anti-Semites, and a large group of innocent bystanders. Many of these individuals were pressed into service by the Nazis. Some went willingly. Others were forced under the threat of death to participate in Hitler's mass murder of the Jewish population. Likewise, there were executions of communist organizers and suspected Russian agents.

The OSI's job today is to sort out who within this tangle of motives and alibis were the Nazi war criminals and collaborators? US investigators look to the Soviets for missing details that will enable the OSI to determine who should be deported and who should be left alone.

But émigrés from iron-curtain countries argue that to trust the Soviets is to stack the legal deck against émigrés who opposed the Red Army and communism.

In the Kungys case, US prosecutors seeking to deport him as a Nazi collaborator asked the Soviet government to find witnesses who could provide details about

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Kungys's role in the massacre at Smilga.

Dailide and Kriunas were among several Soviet citizens Moscow located. Their comments, quoted above, came from hours of videotaped testimony given in a 1982 hearing in Lithuania.

Under the Soviet-US agreement, Soviet citizens may be questioned by US lawyers but only at special hearings presided over by a Soviet government official. Because the Soviets are concerned about possible defections, witnesses are not permitted to travel to the US to give testimony, nor are they permitted to testify alone at the US embassy.

American defense attorneys have objected that witnesses may be less than truthful under such circumstances.

Emigrés argue that just as Soviet-bloc immigrants in the US are reluctant to testify for the defense in OSI cases, for fear the OSI will turn its sights on them, Soviet witnesses are afraid to aid a person the Soviet government considers a traitor against the motherland.

OSI officials counter that even if there are imperfections in the process the entire system is ultimately under the control and review of the US federal judges who decide each case. OSI spokesmen say the judges are more than qualified, to determine when a witness is being evasive or lying, or when a US defendant's rights are being abused.

In 1983, US District Court Judge Dickinson Debevoise refused to consider the videotaped testimony of Kriunas, Dailide, and other Soviet witnesses in the Kungys case. In throwing out the charges that Kungys had been a Nazi collaborator, Judge Debevoise said, "It is impossible to provide the usual safeguards of trustworthiness of evidence having its source in the Soviet Union. The Soviet criminal and judicial system is structured to tailor evidence and produce results which will further the important political ends of the Soviet state at the expense, if need be, of justice. . . ."

In its brief to the Third Circuit Court of Appeals, OSI attorneys argue that Judge Debevoise acted out of "political bias" and with "unfounded speculation about undue Soviet influence on Lithuanian witnesses." The brief adds, "While the Soviet Union may act with impunity in legal proceedings confined to its own borders, it cannot do so in cases under the scrutiny of foreign judges, lawyers, and witnesses."